

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 13810 of 2005
WITH
SPECIAL CIVIL APPLICATION Nos. 13811 TO 13814 OF 2005
WITH
SPECIAL CIVIL APPLICATION No.14288 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be
allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the
fair copy of the judgment ?
- 4 Whether this case involves a substantial
question of law as to the interpretation
of the constitution of India, 1950 or any
order made thereunder ?
- 5 Whether it is to be circulated to the
civil judge ?

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RAMESHBHAI THAKORBHAI MODI & 4 - Petitioner(s)

Versus

DISTRICT COLLECTOR SURAT & 1 - Respondent(s)

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Appearance :

MR KK TRIVEDI for Petitioner(s) : 1 - 5.

MR MR MENGDEY, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/10/2005

ORAL JUDGMENT

1.Rule. Shri Mengdey learned AGP waives service of rule
on behalf of the respondents.

2. In all these petitions as common question of law and facts arise, the same are being disposed of by this common judgment and order.
3. In Special Civil Application No.13810/05 with Special Civil Application No.13811/05 to 13814/05, the respective petitioners have challenged the legality and validity of the order passed by the District Collector, Surat dated 27-4-05 in filing / disposing of the application submitted by the respective petitioners for issuance of certificate that they are agriculturists on selling block No.29 situated at village Simada Tal: Choryasi. In Special Civil Application No.14288/05, the petitioners have challenged the legality and validity of the order passed by the District Collector, Surat dated 21-5-05 in rejecting their application for issuance of certificate that they are agriculturist on selling the property / land bearing survey No.165/3 situated at village Katargam, Tal: Surat. The respective petitioners have also challenged the resolution dated 1-6-2000 and 22-1-2002 with regard to issuing certificate of having continued as agriculturist.
4. Few facts are necessary for the purpose of appreciating the Government Resolutions, which are impugned in the

present Special Civil Application. Under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 the persons, who were agriculturist and who were required to sell their lands for many reasons and after selling the agricultural land, they were losing their status as an agriculturist and were not in a position to purchase agricultural land in future and subsequently considering the difficulties faced by the genuine agriculturist who wanted to sell their agricultural land and purchase the agricultural land and who wanted to continue as an agriculturist, the State Government vide Government Resolution dated 1-6-2000 has evolved a policy that if an agriculturist disposes of his entire agricultural land, he loses the status of an agriculturist and therefore, unable to purchase agricultural land in the state and by the aforesaid policy of the resolution it is resolved by the State Government that after an agriculturist disposes of his entire agricultural land, the agriculturist should apply to the Collector for a certificate declaring him as an agriculturist within the period of 30 days from the date of transaction and should purchase another agricultural land within a period of 90 days from the date on which the Collector

issues such certificate. The Government Resolution dated 1-6-2000 came to be further modified vide resolution dated 22-1-02 and the period of 90 days for purchasing another agricultural land, came to be extended to 180 days. However, the period of 30 days for making an application to the Collector for such a certificate was not extended. That thereafter, vide Government Resolution dated 24.1.2003, the State Government has extended the period of 30 days for making such application to the Collector to 60 days and the Collector was required to issue certificate within a period of 60 days instead of 30 days and the period of 90 days to purchase the agricultural land came to be extended to 180 days. Considering the various representations from the Bharatiya Kisan Sangh and other agriculturist that there might be justifiable reasons beyond their control in purchasing the land within 180 days from the date of certificate issued by the Collector and considering the said fact, another resolution dated 7.6.2003 came to be issued, it was resolved by the State Government that on making an appropriate application by the agriculturist and pointing out the genuine reasons beyond their control in not purchasing the agricultural land within 180 days

from the certificate issued by the Collector, the Collector is empowered to consider the same on merits and can extend the period for a further period of three months. Therefore, the sum and substance of the aforesaid Government Resolutions is that if an agriculturist wants to sell agricultural land owned by him and continue to be the agriculturist, he has to make an application within a period of sixty days from entering into such transaction and on receipt of the said application, the Collector is required to issue certificate of continuing him as an agriculturist within a period of 60 days from such application and on receipt of the said certificate the said agriculturist who has sold his entire agricultural land, is required to purchase another agricultural land within a period of 180 days from such certificate and if on an appropriate application showing the justifiable reasons beyond his control in not purchasing agricultural land within a period of 180 days from issuing such certificate, the Collector is empowered to consider the said application on merits and extend the period of purchasing another agricultural land for a further period of 180 days only. Therefore, after 360 days of such certificate issued by the Collector, the said

person cannot purchase agricultural land and he loses his status as an agriculturist. Similarly, on not making an application within a period of 60 days with the Collector after the transaction of selling his entire agricultural land for such certificate, the said person also loses his status as an agriculturist. In the present case, the respective petitioners after selling their entire agricultural lands, submitted the application with the Collector which was admittedly beyond prescribed period of making such an application. The Collector, Surat by its impugned order dated 27.4.2005 as well as 21.5.2005 rejected / filed the application submitted by the petitioners for granting such certificate that they are continued to be the agriculturist. Being aggrieved by and dissatisfied with the above two orders passed by the Collector, Surat the petitioners have preferred the present Special Civil Applications for the aforesaid reliefs.

5. Shri K.K. Trivedi, learned advocate appearing on behalf of the respective petitioners has submitted that fixing of the time limit to make an application within a stipulated time is unreasonable and arbitrary. Relying upon the judgment of this court in the case of Chhotubhai Chhikabhai Patel and Ors v. Special Land

Acquisition Officer, Surat and Ors reported in 2000(2) GLR 1311, it is submitted by Shri K.K.Trivedi, that such a condition is held to be directory and not mandatory in nature. Shri Trivedi has relied upon the provisions of Sections 2(a), 2(2), 2(5), 2(6), 2(8), 6(6) and 70(a) of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "the Act"). Relying upon the aforesaid provisions of the Act, more particularly Section 2(2) of the Act and the definition of "the agriculturist", he has submitted that a person, who cultivates land personally is an agriculturist and according to him, if a person was cultivating the land in the year 1948, he continues to be the agriculturist all throughout. Relying upon Section 2(5) of the Act he has submitted that "to cultivate" means which is grammatic version and cognate expression means to till or husband the land for the purpose of raising or improving agricultural produce. Relying upon Section 2(6) of the Act it is submitted that any person even if cultivates land in other capacity can also be said to cultivate the land personally. Relying upon Section 70(a) of the Act, Shri Trivedi has submitted that it is only the Mamlatdar who can decide the dispute whether a person is an agriculturist or not and the Collector has

no jurisdiction to decide the dispute whether the petitioners are agriculturists or not and therefore, it is submitted that impugned Government Resolutions with regard to the status is dehors the provision of the Act which requires to quash and set aside. He has further submitted that even fixing the time limit to make an application for getting such certificate with the Collector is also unreasonable and arbitrary and therefore, it is requested to allow the present Special Civil Applications by quashing and setting aside the aforesaid orders as well as the Government Resolutions and direct the respondents to grant permission to the petitioners to purchase the agricultural lands. It is further submitted by him that in fact in the present case, the petitioners did purchase the agricultural land within a stipulated time framed under the aforesaid resolutions but they did not submit an application with the Collector for getting the certificate of having continued as an agriculturist and therefore, it is requested to allow the present Special Civil Applications.

6. Shri Trivedi learned advocate appearing on behalf of the petitioners has relied upon the judgment of this court in the case of Vali Mahomad Adam and Others V.

State reported in 4 GLR page 138 and the judgment of the Hon'ble Supreme Court in the case of Sale Tax Officer, Ponkunnam and Another V. K.I. Abraham reported in 1967 SCC page 1823. Another decision of the Division Bench of this court in the case of Chhotubhai Chhikabhai Patel and Ors. V. Special Land Acquisition Officer, Surat and Ors. Reported in 2000(2) GLR page 1311. Relying upon the judgment of the Division Bench of this court in the case of Chhotubhai Chhikabhai Patel (supra), Shri Trivedi has submitted that the time limit is to be construed as directory and not mandatory. He has also further submitted that in fact fixing of time limit to make an application itself is unreasonable and arbitrary. Relying upon the judgment of the Hon'ble Supreme Court in the case of Sale Tax Officer, Ponkunnam (supra), it is submitted that the respondents have no authority to prescribe the time limit within which the application is to be submitted.

7. Shri Mengdey, learned AGP appearing on behalf of the State Government has opposed the present Special Civil Applications and the affidavit-in-reply is filed on behalf of the respondents. It is submitted that as such, none of the fundamental rights of the petitioners are violated by the aforesaid Government Resolutions.

It is also further submitted that the aforesaid Government Resolutions are in the realm of the policy decision of the State Government and as such the aforesaid Government Resolutions came to be issued considering the difficulties faced by the genuine agriculturists, though after selling their entire agricultural land, they were not in a position to purchase the agricultural land as unless they got the consideration and money on selling the land in question, they were not in a position to purchase another agricultural land and considering the difficulties faced by those agriculturists, who were required to sell their entire agricultural land and that were not in a position to purchase another agricultural land within a reasonable time and they were losing their status as an agriculturist and on getting the consideration of selling their entire agricultural land, they can purchase the land in question within reasonable time, the aforesaid Government Resolutions are issued and by which the agriculturist who wanted to dispose of/sold their entire agricultural land and if they want to continue with their status as an agriculturist and purchase another agricultural land, are required to make an

application within a period of 60 days with the Collector that their status as an agriculturist continues and that the Collector is required to issue necessary certificate within a period of 60 days and on receipt of such certificate, the said agriculturist, who had sold his entire agricultural land is required to purchase another agricultural land within a period of 180 days and now considering various representations, the State Government has passed the aforesaid resolutions and on pointing out genuine reasons beyond their control, the Collector can extend the period of 180 days for a further period of 3 months. It is also further submitted by Shri Mengdey that as such, considering the provision of the Act and considering Section 2(2) of the Act, moment an agriculturist sell his entire agricultural land, he loses the status as an agriculturist as he is not having any land and therefore, he cannot be said to be cultivating the land personally and considering the difficulties faced by the genuine agriculturists, the aforesaid resolutions are issued which otherwise, the Government was not bound to issue and continue the status of the person as an agriculturist who sells his entire agricultural land and therefore, it is not open

for the petitioners to challenge the same. It is submitted that if the aforesaid Government Resolutions are set aside as prayed for by the petitioners in that case, the petitioners and/or other persons who have sold their entire agricultural land cannot purchase the agricultural land subsequently even within a period of 180 days as they lose their status as an agriculturist. It is submitted that fixing of the time limit to make an application is neither unreasonable nor arbitrary as after entering into the transaction, a genuine person / agriculturist, who wants to purchase another agricultural land on finding out some suitable land is required to make an application within a period of 30 days and now 60 days and the Collector is required to issue certificate within 60 days and thereafter, the agriculturist who had sold his entire agricultural land is required to purchase another land within a period of 180 days thereafter. So in all the persons, who have sold their entire agricultural land is permitted to purchase another agricultural land within a period of 10 months, which cannot be said to be in any way unreasonable and arbitrary. It is submitted that if such limitation is not prescribed then in that case nobody will purchase the agricultural

land at any time and continue with the status as an agriculturist, though he loses his status as an agriculturist considering the provision of the Act, which is not permissible. Under the circumstances, it is requested to dismiss the present Special Civil Application with cost.

8. Heard learned advocates for the parties.

9. As per Section 2(2) of the Act "an agriculturist" means a person who cultivates the land personally. For the purpose that a person cultivates the land personally he must be in possession and owner of the agricultural land. Therefore, so long as a person owns and/or is in possession of the agricultural land, he can be said to be an agriculturist. Meaning thereby, when a person sells his entire agricultural land, he is not in possession and owner of the agricultural land and therefore, he cannot be said to be an agriculturist. Considering the difficulties faced by the genuine agriculturist more particularly poor agriculturist, who wanted to purchase another agricultural land after selling their agricultural land and because of want of fund, they were not in a position to purchase another agricultural land simultaneously and they were losing their status as an agriculturist, the State Government

has taken a policy decision by the aforesaid resolutions. In the first resolution dated 1-6-2000 it is observed that while issuing such a resolution that on selling the entire agricultural land, a person becomes non agriculturist and loses his status as an agriculturist and for the purpose of purchasing another agricultural land and to continue his status as an agriculturist, he has to purchase another land first and thereafter, he is required to sell his agricultural land and for the purpose of purchasing another agricultural land first, he needs money and without money, a poor agriculturist cannot purchase another land first and he is required to sell his agricultural land and after getting money, he can purchase another agricultural land and in the mean time, considering Section 2(2) of the Act, he loses his status as an agriculturist. It is also considered while passing such resolution that for purchasing another agricultural land either he has to sell his entire agricultural land whereby he loses his status as an agriculturist or he can sell his part of the agricultural land. However, on doing the same, there will be a fragment land, it will be against the provision of the Bombay Fragmentation Act and to avoid aforesaid difficulties, the State

Government has evolved aforesaid policy by aforesaid resolutions that on entering into the transaction of selling his entire agricultural land the person / said agriculturist has to make an application before the Collector within a period of 60 days that he continues to be the agriculturist and the Collector is required to issue certificate of having continued as an agriculturist within a period of 60 days from the date of receipt of such application and on getting the said certificate, the said person has to purchase another agricultural land within a period of 180 days thereafter. Even considering the various representations that a person might face difficulty in purchasing the another land and there might be genuine bona fide reasons beyond the control of that person to purchase the government land within a period of 180 days and even considering those difficulties and the representations by way of latest resolution dated 7-6-03, it is resolved that if a person has not purchased another agricultural land within a period of 180 days from such certificate and there are bona fide reasons beyond his control, in that case they may make an application before the Collector and now the Collector is empowered to consider the said application on merits

and can extend the period for purchase of another agricultural land for a further period of three months. Considering the above object and purpose and the policy of the State Government, it cannot be said that the State Government's resolutions / policy is arbitrary and/or unreasonable and/or fixing the time limit for making an application is arbitrary and/or unreasonable. On the contrary, the aforesaid Government Resolutions are in the benefit of the agriculturist. As such the Government was not required and/or bound to issue such policy/ Government Resolutions, as under the provision of the Bombay Tenancy Act, a person who sells his entire agricultural land cannot continue to be the agriculturist and in stead with a view to see that the said agriculturist after selling his entire agricultural land continues with the status of an agriculturist for reasonable time and purchase another agricultural land, such a policy has been evolved and the Government Resolutions are issued, the same are not required to quash and set aside as they are neither unreasonable nor arbitrary. On the contrary, the same is in benefit of the agriculturist. If the contention of the petitioners that no time limit is to be fixed for making an application with the Collector for

issuance of the certificate that he continues to be the agriculturist even on selling his entire agricultural land is accepted, then the same can be said to be as such contrary to the provisions of the Act and an agriculturist who has sold his entire agricultural land though is not personally cultivating the land will continue as an agriculturist, which is not permissible. The judgments which are cited at the bar on behalf of the petitioners are not applicable to the facts and circumstances of the present case. In the present case, it is a policy decision of the State Government to grant certain additional time limit, though the Government as such was not bound to give and therefore, the challenge to the aforesaid Government Resolutions by the petitioners fails.

10.I have gone through the judgments cited at the bar behalf of the petitioners and none of the judgments are applicable and/or are of any assistance to the petitioners considering the facts of the case. As stated above and hereinafter, there is no obligation on the part of the respondents to issue such a circular / notification extending the time limit to get benefit of the agriculturist on disposing of their entire agriculture land. With a view to see that a poor

agriculturist and/or genuine agriculturist, who wants to continue to be the agriculturist and for some reason, he has to sell his land and he wants to continue with the status of agriculturist, he has to make an application and get the certificate and has to purchase the land within stipulated time as per the circular/notification. Therefore, the time limit prescribed while implementing the said policy cannot be said to be arbitrary and/or dehors the provisions.

11. So far as another prayer to quash and set aside the impugned order passed by the Collector, Surat dated 27-4-2005 as well as dated 21-5-05 rejecting / filing the application submitted by the petitioners for being continued as an agriculturist is concerned, as the application submitted by the petitioners were beyond the period prescribed fixed by the aforesaid Government Resolutions, it cannot be said that the said decisions/orders are in any way illegal and/or arbitrary, which requires interference of this court. The relief which is prayed by the petitioners directing the respondents to grant permission to the petitioners to purchase the agricultural land cannot be granted as the same will be contrary to the aforesaid Government Resolutions.

12. For the reasons as stated above, there is no substance

in the aforesaid petitions and the same is required to be dismissed and are accordingly dismissed. Rule is discharged in each of the petition. However, there will be no order as to costs.

(M.R. SHAH, J)

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